

July 29, 2003

Re: FCC Proceeding #02-278 – Unsolicited Facsimile Rule

The Ohio State Medical Association (OSMA) is writing in response to the recent action taken by the FCC to amend the regulations that implement the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, the decision to no longer recognize the “established business relationship” exception to the rule pertaining to fax advertisements is seriously affecting the OSMA’s ability to conduct business with our membership, other customers and business partners. The OSMA is a nonprofit professional association of approximately 15,000 physicians, residents and medical students in the State of Ohio. OSMA’s membership includes most of the Ohio physicians who are engaged in the private practice of medicine, including all specialties. The OSMA’s purposes are to improve public health through education, encourage an interchange of ideas among members, and maintain and advance the standards of medical practice.

The FCC’s unsolicited fax rule change has created onerous administrative and economic burdens for the Ohio State Medical Association (OSMA) due to the requirement to obtain “expressed written consent” from our own members prior to sending a fax advertisement. This is an unnecessary restriction of legitimate commercial activity between the OSMA and its membership who expect the OSMA to communicate with them concerning membership solicitation and renewal, educational program offerings, meeting registration and the sale of OSMA publications and other products or services. The OSMA routinely carries out these types of solicitations and transactions with our membership. Further, we have found that conducting these activities via fax to be efficient and cost effective as well as the communication method of choice for a significant number of our members. The OSMA is now faced with the challenging administrative, legal, economic and record keeping ramifications that will arise thanks to the new FCC changes. In addition, our physician membership will see this as simply another time-wasting government mandate that only impedes their ability to spend time and resources on direct health care delivery.

Again, the proposed changes, which are scheduled to go into effect on August 25, 2003, create a significant economic burden for the OSMA. While these new regulations may be suitable for residential telephone solicitation as the new Do Not Call registry provides, they are certainly not acceptable for association-to-member facsimile communications and may not be acceptable for other common business facsimile communications between businesses and customers.

With penalties reaching \$11,000 per authorized fax, this is a burden that few associations can financially endure. The proposed FCC changes are a prime example of an idea where the disadvantages and unintended consequences far outweigh the benefits of a strict liability rule pertaining to unsolicited fax advertisements used by membership associations. For all of these reasons, the OSMA respectfully requests that the FCC reconsider the rule changes regarding unsolicited facsimile advertisements that were published in the July 25 Federal Register.

Sincerely,

Nancy P. Gillette  
Senior Counsel